REMARKS/ARGUMENTS

The present application has been reviewed in light of the Office Action dated October 28, 2009. Claims 1-10 and 12-46 are currently pending, of which claims 1, 7, 15, 18 and 22-23 are amended herein, claims 26-43 have previously been withdrawn and claims 45-46 are new. Applicant respectfully requests early and favorable reconsideration of this application.

Claims 1, 6-9, 12, 15 and 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,162,244 to Braun et al. (hereinafter "Braun"). Applicant respectfully submits that independent claim 1, as amended herein, is allowable over Braun because Braun fails to disclose the limitations of independent claim 1.

Pursuant to 35 U.S.C. § 102, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. Applicant respectfully submits that Braun fails to disclose each and every element recited in independent claim 1, as required by 35 U.S.C. § 102.

Independent claim 1, as amended, recites a device for joining a first body vessel to a second body vessel including, *inter alia*, "an inner member having. . . a fluid transmission region," and an expandable anchor disposed "adjacent the fluid transmission region" and having an "expanded condition, the expandable anchor moving to the expanded condition upon absorbing fluid." In an embodiment of the present application, as depicted in annotated FIG. 7 below for example, an anastomotic device 100 includes an inner member 112 having a fluid transmission region defined by a plurality of perforations 120. An expandable anchor 114 is

disposed adjacent the fluid transmission region, and is depicted in an expanded configuration wherein fluid is absorbed in the anchor 114 (see paragraphs [0063] and [0066] of Applicant's Specification).

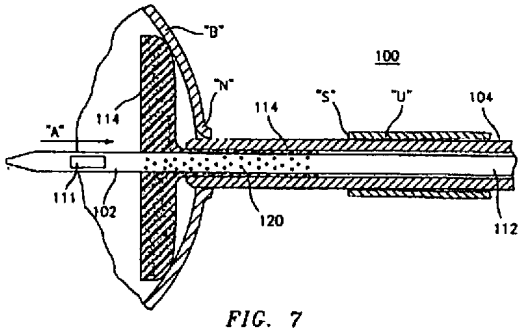
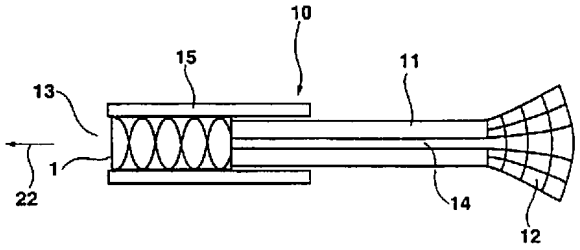


FIG. 7

This arrangement permits, *inter alia*, the anchor 114 to be expanded by introducing water or saline from the inner member 112 into the anchor 114 through the perforations 120 as described in paragraph [0059] of Applicant's specification. Thereafter, the inner member 114 may serve as a Foley-type catheter to drain fluid from the bladder "B." An opening 111 is provided to permit entry of fluid from the bladder "B" into the inner member 112 as described in paragraph [0057]. Since the anchor 114 is configured to absorb fluids, any fluid not entering the opening 111 may be absorbed into the anchor 112, and guided to the perforations 120 where the fluid may be drained.

In contrast to claim 1, Braun discloses a stent application device 10 as depicted in FIG. 4C below. The device 10 includes a displacement device 11, which may be used to displace a stent 1 from a bushing 15 by moving the stent 1 in the direction of arrow 22 (col.7, lines 21-22).

Fig. 4c



The stent 1 is constructed of a tubular weave 3 of filaments 5 sandwiched between an inner tube 2 and a coating 4 as depicted in Figures 1d and 3d below. The inner tube 2 is constructed of an elastic material (col. 6, line 33) and the weave 3 is a self-expanding weave and thus the stent 1 may self-expand once released from the bushing 15 (see col. 1, lines 66-67).

Fig. 1d

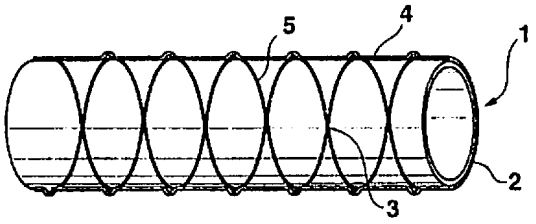
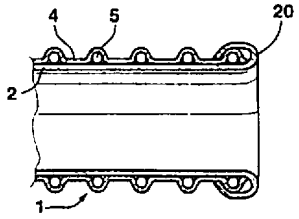


Fig. 3d



Since Braun describes a self-expanding stent that expands when released from the constraint of the bushing 15, it is evident that the stent 1 does not absorb a fluid in order to expand. Moreover, the displacement device 11 does not include a fluid transmission region for delivering a fluid to the stent 1.

Furthermore, the concept of providing "a sheath disposed about the expandable anchor for defining the shape of the expandable anchor when in the expanded condition" is entirely absent from Braun. In Braun, the stent remains in a cylindrical configuration before and after being deployed by the device 11.

In view of the foregoing, Applicant respectfully submits that the structure described in independent claim 1 is not taught, disclosed or contemplated by Braun. Accordingly, Applicant respectfully submits that claim 1 is distinguishable over Braun, and therefore allowable over Braun under 35 U.S.C. § 102(b). As claims 6-9 and 12 depend from claim 1, and contain all of the features of claim 1, Applicant respectfully submits that claims 6-9 and 12 are also allowable over Braun under 35 U.S.C. § 102(b).

As indicated above, claims 15 and 44 also stand rejected under 35 U.S.C. § 102(b) as being anticipated by Braun. Applicant respectfully submits that independent claim 15, as amended herein, is allowable over Braun because Braun fails to disclose the limitations of independent claim 15.

Independent claim 15, as amended, recites a device for performing a surgical anastomosis of a first body vessel and a second body vessel, including, *inter alia*, an "inner member having a fluid transmission region disposed along a longitudinal length of the inner member through which a fluid may pass from an interior of the inner member to an exterior of the inner member along the fluid transmission region" and "a radially expandable anchor adapted to expand in response to application of fluid through the fluid transmission region of the inner member."

The displacement device 11 of Braun includes a lumen 14, and the Office Action asserts that the displacement device 11 "fully capable of permitting liquid to pass therethrough." The Office Action further asserts that the displacement device 11 "has a porous end 12, which is fully capable of permitting the transmission of moisture." Applicant respectfully submits, however, that the lumen 14 and the spread out end 12 permit fluids to be transmitted from an interior of the

displacement device 11 to an exterior of the displacement device 11 only at the proximal and distal ends of the displacement device 11. The spread out end 12 is used to guide the stent 1 into and out of the displacement device 11 through an opening at the end of the displacement device 11 as described with reference to Figures 4a and 4b depicted below. Braun offers no suggestion that the spread out end 12 would permit fluid transmission "along any fluid transmission region" of the displacement device 11 in accordance with independent claim 15.

Fig. 4a

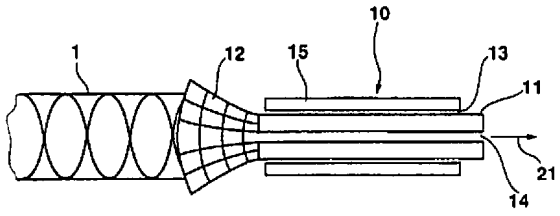
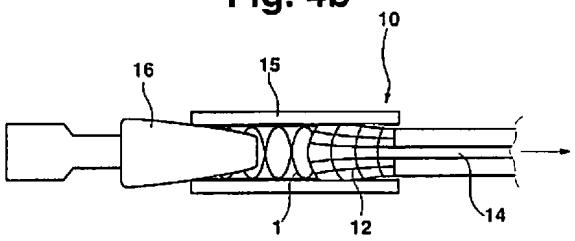


Fig. 4b



In further contrast to independent claim 15, the stent 1 of Braun is not "adapted to expand in response to application of fluid." As discussed above with reference to FIG. 1, the stent 1 of Braun is self-expanding when released from the confines of bushing 15.

In view of the foregoing, Applicant respectfully submits that the structure described in independent claim 15 is not taught, disclosed or contemplated by Braun. Accordingly, Applicant respectfully submits that claim 15 is distinguishable over Braun, and therefore allowable over Braun under 35 U.S.C. § 102(b). As claim 44 depends from claim 15 and contain all of the features of claim 15, Applicant respectfully submits that claim 44 is also allowable over Braun under 35 U.S.C. § 102(b).

Claims 2, 16-17, and 20-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of U.S. Patent No. 5,222,964 to Cooper (hereinafter "Cooper"). Applicant submits that claims 2, 16-17, and 20-24 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper.

The Examiner relies on Cooper for the disclosure of a stent being made from a sponge-like or foam-like material. Cooper relates generally to joining resected ends of a Fallopian tube with a stent having a diameter or a taper substantially similar to the Fallopian tube (see, e.g., claims 1 and 2). Applicant submits that even if Cooper does disclose a stent being made from a sponge-like or foam-like material, Cooper fails to cure the deficiencies of Braun with respect to claim 1 in that Cooper does not disclose the combination of "a fluid transmission region near the distal end of an inner member," and an expandable anchor "adjacent the fluid transmission region," where the expandable anchor has "an expanded condition, the expandable anchor moving to the expanded condition upon absorbing" as recited in independent claim 1. Also, Cooper fails to cure the deficiencies of Braun with respect to claim 15 in that Cooper does not disclose the combination of an "inner member having a fluid transmission region disposed along a longitudinal length of the inner member" and "a radially expandable anchor adapted to expand in response to application of fluid through the fluid transmission region" as recited by independent claim 15.

Furthermore, claim 2 depends from claim 1 and the concept of providing "a sheath disposed about the expandable anchor for defining the shape of the expandable anchor when in the expanded condition" is entirely absent from Cooper.

Applicant submits that since Cooper fails to cure the deficiencies of Braun with respect to independent claims 1 and 15, that the subject matter of claims 2, 16-17, and 20-24, as a whole, which depend from independent claims 1 and 15 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper.

Claims 3, 4 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of Cooper and in further view of U.S. Patent No. 5,617,878 to Taheri (hereinafter "Taheri"). Applicant submits that claims 3, 4 and 19 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper and Taheri.

The Examiner relies on Taheri for the disclosure of a stent having a frusto-conical shape. Taheri relates generally to a mesh stent for use in the treatment of aortic disease (see col. 5, lines 24-34). Applicant submits that even if Taheri does disclose a stent having frusto-conical shape, Taheri fails to cure the deficiencies of Braun in view of Cooper in that Taheri does not disclose the combination of a fluid transmission region and expandable anchor as recited in either of claims 1 and 15. In fact, Taheri's stent 40 is simply described as being conical. The stent 40 is carried into position using a balloon. There is no disclosure of the stent being expandable.

Applicant submits that since Taheri fails to cure the deficiencies of Braun in view of Cooper with respect to independent claims 1 and 15, that the subject matter of claims 3, 4 and 19, as a whole, which depend from independent claims 1 and 15 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper and Taheri.

Furthermore, claims 3 and 4 depend from claim 1 and the concept of providing "a sheath disposed about the expandable anchor for defining the shape of the expandable anchor when in

the expanded condition" is entirely absent from Taheri. In Taheri, the stent remains in its original configuration before and after being carried into position by the balloon.

Claims 5 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of Cooper and in further view of U.S. Patent No. 6,699,274 to Stinson (hereinafter "Stinson"). Applicant submits that claims 5 and 18 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper and Stinson.

The Examiner relies on Stinson for the disclosure of a stent expanding upon contact with moisture. Stinson relates generally to stent delivery systems for balloon-expandable stents and self-expandable stents (see col. 1, lines 14-18). The Examiner refers specifically to a gelatin-encased, self-expanding stent described at col. 2, lines 25-37. The stent described by Stinson is restrained in an unexpanded configuration by the gelatin. When the stent is placed into a patient's esophagus, moisture present within the esophagus dissolves the gelatin and permits the stent to self-expand.

Applicant respectfully submits that since the stent described by Stinson is self-expanding when moisture dissolves the restraining gelatin, the stent does not have an expanded configuration "the expandable anchor moving to the expanded condition upon absorbing fluid" by the stent as recited in claim 1. And since the moisture for dissolving the gelatin may already be present in the esophagus, Applicant submits that the stent described by Stinson does not suggest the use of a fluid transmission region on the delivery systems.

Applicant submits that even if Stinson does disclose a stent expanding upon contact with moisture, Stinson fails to cure the deficiencies of Braun in view of Cooper in that Stinson does not disclose the combination of a fluid transmission region and expandable anchor as recited in

either of claims 1 and 15. Since Stinson fails to cure the deficiencies of Braun in view of Cooper with respect to independent claims 1 and 15, Applicant submits that the subject matter of claims 5 and 18, as a whole, which depend from independent claims 1 and 15 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper and Stinson for at least the reasons discussed above.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of U.S. Patent No. 5,702,419 to Berry et al. (hereinafter "Berry"). Applicant submits that claim 10 is allowable under 35 U.S.C. § 103(a) over Braun in view of Berry.

The Examiner relies on Berry for the disclosure of a device having a control unit. Berry relates generally to an apparatus for mechanically expanding a stent within a body passage (see col. 1, lines 12-15). Applicant submits that even if Berry does disclose an apparatus with a control unit, Berry fails to cure the deficiencies of Braun with respect to claim 1 in that Berry does not disclose the combination of disclose the combination of "a fluid transmission region near the distal end of an inner member," and an expandable anchor "adjacent the fluid transmission region," where the expandable anchor has "an expanded condition, the expandable anchor moving to the expanded condition upon absorbing fluid" as recited in independent claim 1.

Accordingly, in view of the foregoing, since Berry fails to cure the deficiencies of Braun with respect to claim 1, Applicant submits that the subject matter of claim 10, as a whole, which depends from claim 1 is allowable under 35 U.S.C. § 103(a) over Braun in view of Berry for at least the reasons discussed above.

Claims 13, 14 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of Cooper and in further view of U.S. Patent No. 5,059,211 to Stack (hereinafter "Stack"). Applicant submits that claims 13, 14 and 25 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper and Stack.

The Examiner relies on Stack for the disclosure of bioabsorbable stent. Stack relates generally a balloon-expandable, or otherwise mechanically expandable, stent for placement in a blood vessel (see col. 2, lines 35-47). Applicant submits that even if Stack does disclose a bioabsorbable stent, Stack fails to cure the deficiencies of Braun in view of Cooper in that Stack does not disclose the combination of a fluid transmission region and an expandable anchor as recited in either of claims 1 and 15. Since Stack fails to cure the deficiencies of Braun in view of Cooper with respect to independent claims 1 and 15, Applicant submits that the subject matter of claims 13, 14 and 25, as a whole, which depend from independent claims 1 and 15 are allowable under 35 U.S.C. § 103(a) over Braun in view of Cooper and Stack for at least the reasons discussed above.

Newly presented claim 45 depends from independent claim 1, and relates to the fluid transmission region and radially expandable anchor exhibiting substantially the same length as described in paragraph [0061] of Applicant's specification. Applicant respectfully submits that claim 45 is allowable over the prior art of record.

Newly presented claim 46 depends from independent claim 1, and relates to an expandable anchor configured for exerting a radially inward force on the inner member as described in paragraphs [0070] and [0072] of Applicant's specification. Applicant respectfully submits that claim 46 is allowable over the prior art of record.

In view of the amendments made to the claims herein, and in view of the remarks and arguments presented above, it is respectfully submitted that each of the rejections raised by the examiner in the present Office Action have been overcome. It is respectfully submitted that none of the references of record, considered individually or in any proper combination with one another, disclose or suggest the present invention as claimed.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, or resolve any outstanding matters, the Examiner is sincerely invited to contact the Applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 1-10, 12-25 and 44-46 is earnestly solicited.

Respectfully submitted,

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